

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 72 – HB 61

March 31, 2015

**SUMMARY OF ORIGINAL BILL:** Prohibits the state from operating any American Health Benefit Exchange or any other health insurance exchange in the state under the Patient Protection and Affordable Care Act (PPACA). Prohibits the state's annual appropriations act from providing, or being construed to constitute, the legislative authorization required for any health insurance exchange. Application of the proposed legislation is dependent on the United States Supreme Court ruling in *King v. Burwell* (Docket No. 14-114) that the Internal Revenue Service (IRS) may not promulgate regulations to extend tax credit subsidies to coverage purchased through exchanges established by the federal government under Section 1321 of the PPACA, as amended.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Impact – Due to a number of unknown factors, the impact to commerce as a result of the proposed legislation cannot reasonably be determined.

**SUMMARY OF AMENDMENT (005617):** Deletes all language after the enacting clause. Prohibits the state from taking any action if the action would result in an individual being subject to federal tax penalties or an employer being subject to penalties pursuant to the Patient Protection and Affordable Care Act (PPACA). The state may take action if granted authority to do so by a joint resolution of the General Assembly. Prohibits the state's annual appropriations act as providing or being construed to constitute authorization by the General Assembly.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- It is assumed action referenced in the bill as amended would be a State Health Insurance Exchange under the PPACA.

- Currently, the State of Tennessee does not operate a State Health Insurance Exchange under the PPACA; therefore, there is no impact to the current oversight or regulatory activities or workload of the Department of Commerce and Insurance.
- It is unknown if the state would decide to operate a State Health Insurance Exchange or when such exchange would be operable in the absence of this bill; therefore, any future fiscal impact is indeterminable.
- It is assumed that any fiscal impact the state will incur as a result of creating, implementing, and operating a health insurance exchange will be determined and considered at the time of passage of the authorizing joint resolution by the General Assembly.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

### **Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- Based on information provided by the Department of Commerce and Insurance, if the Supreme Court rules that the IRS may not extend tax credit subsidies to coverage purchased through the Federal Health Insurance Exchanges, then the insurance purchasers through the exchange will not have access to federal subsidies, but will still be required to obtain insurance in order to avoid a tax penalty and employers would still have to offer health insurance.
- The state would then be prohibited from operating a Health Benefit Exchange that would allow access to those who are eligible to receive federal subsidies when purchasing insurance unless authorized through a joint resolution of the General Assembly which could delay the implementation date of a state operated exchange.
- Without the premium subsidies, the number of individuals purchasing insurance could decline due to the unaffordability of the available plans versus the cost of the federal penalty for not having insurance. If individuals choose not to purchase health insurance, then there would be a negative fiscal impact to health insurance companies in the state.
- Depending on the health status of the individuals who are no longer covered by health insurance, there could be an increase in premium rates if healthy individuals decline purchasing insurance and the membership of the plans is unhealthier. How insurance companies decide to accommodate for the loss of revenue and the health status of their membership will be a business decision that cannot be quantified.
- Due to a number of unknown factors, including how the U.S. Supreme Court will rule in *King v. Burwell* (Docket No. 14-114); if the state would decide to operate a Health Benefit Exchange in absence of the bill; if the General Assembly will authorize a state operated Health Benefit Exchange; the number of individuals who would decide to pay the federal penalty instead of purchasing health insurance without the federal subsidy; the health status of those who do not purchase health insurance; and the decisions that health insurance companies in the state would make to accommodate for the possible changes to their membership, the impact to commerce is indeterminable.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "Jeffrey L. Spalding". The signature is written in a cursive style with a large, stylized "J" and "S".

Jeffrey L. Spalding, Executive Director

/kml